

**OFFICIAL INFORMATION\*\*CONFIDENTIAL\*\*EVIDENCE CODE SECTION 1040  
INTRADEPARTMENTAL CORRESPONDENCE**

DATE: January 9, 2020  
TO: Honorable Board of Police Commissioners  
FROM: Inspector General  
SUBJECT: OFFICER-INVOLVED SHOOTING 005-19 FOR 1/14/20 CLOSED-SESSION AGENDA

| <u>Division</u> | <u>Date</u> | <u>Time</u> | <u>Duty-On (X) Off ()</u> | <u>Uniform-Yes (X) No ()</u> |
|-----------------|-------------|-------------|---------------------------|------------------------------|
|-----------------|-------------|-------------|---------------------------|------------------------------|

|         |         |           |  |  |
|---------|---------|-----------|--|--|
| Central | 2/14/19 | 6:52 a.m. |  |  |
|---------|---------|-----------|--|--|

| <u>Officer(s) Involved in Use of Force</u> | <u>Length of Service</u> |
|--|--------------------------|
|--|--------------------------|

|                   |                    |
|-------------------|--------------------|
| Estrada, J./PO II | 10 years, 8 months |
|-------------------|--------------------|

| <u>Total Involved Officer(s)</u> |
|----------------------------------|
|----------------------------------|

2 x PO II

| <u>Suspects</u> | <u>Deceased (X)</u> | <u>Wounded ()</u> | <u>Non-Hit ()</u> |
|-----------------|---------------------|-------------------|-------------------|
|-----------------|---------------------|-------------------|-------------------|

Wilfredo Hernandez: Male Hispanic, 47 years of age.

**COP Recommendations**

**Tactics** –Tactical Debrief, Officers Estrada and Mendoza.

**Drawing/Exhibiting** – In Policy, No Further Action, Officer Estrada.

**Less-Lethal Use of Force** – In Policy, No Further Action, Officer Estrada.

**Lethal Use of Force** – In Policy, No Further Action, Officer Estrada.

**IG Recommendations**

**Tactics** – Same as COP.

**Drawing/Exhibiting** – Same as COP.

**Less-Lethal Use of Force** – Same as COP.

**Lethal Use of Force** – Same as COP.

## **Table of Contents**

|      |   |       |
|------|---|-------|
| I.   | Investigation   |       |
| i.   | Annotated Force Investigation Division (FID) Incident Summary | p. 3  |
| II.  | Chief of Police Report  |       |
| i.   | Chief of Police Findings                                      | p. 23 |
| ii.  | Chief of Police Analysis                                      | p. 23 |
| III. | Inspector General Review                                      |       |
| i.   | Inspector General Analysis                                    | p. 37 |
| ii.  | Inspector General Recommendations                             | p. 37 |

## **INVESTIGATION**

### **Synopsis:**

Uniformed police officers working an overtime detail at Transit Services Division (TSD) were directed to a man with a knife, threatening security officers. One officer utilized a TASER; which was ineffective. The suspect ran toward an officer while holding a knife, resulting in an Officer-Involved Shooting (OIS).

### **Annotated Force Investigation Division (FID) Incident Summary<sup>1</sup>**

On Thursday, February 14, 2019, Pacific Patrol Division Uniformed Police Officer II Jorge Estrada, Serial No. 39492, and Northeast Patrol Division Uniformed Police Officer II Wilson Mendoza, Serial No. 42126, Unit 31FB301, were working an overtime detail at TSD.<sup>2</sup> They were assigned a foot beat on the Mezzanine level of the Metropolitan Transit Authority (MTA) train station located at 660 South Figueroa Street. At approximately 0529 hours, Officer Mendoza broadcast they were Code Six when they arrived at the location.<sup>3</sup>

At approximately 0645 hours, Officers Estrada and Mendoza were standing near the train tracks, assisting MTA Transit Security Officers (TSOs) Antoinette Estrada and Benjamin Legaspi, as they escorted passengers off the Blue Line train.<sup>4</sup>

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<sup>1</sup> The Incident Summary presented here is reproduced from FID's report regarding this case and is supplemented with annotations by the OIG. All OIG annotations are referenced as an "OIG Note." All other references and citations in the reproduced FID Incident Summary (e.g., Investigators' Notes or Addenda Items) are reproduced directly from FID's report. Unless otherwise stated, all information provided in OIG annotations is derived from FID's investigation of this incident.

<sup>2</sup> Police Officer II Jorge Estrada, 10 years 8 months with the Department, 33 years of age, 6 feet, 1 inch tall, 225 pounds. Police Officer II Wilson Mendoza, 3 years, 8 months with the Department, 36 years of age, 5 feet, 8 inches tall, 200 pounds. They were assigned to Watch 2, working from 0500 to 1400 hours. The officers were each wearing ballistic vests, carrying Department-approved pistols, a TASER, canisters of Oleoresin Capsicum (OC) spray, their PR-24 batons and two pairs of handcuffs each. Officers Estrada and Mendoza did not have Hobble Restraint Devices (HRD) on their person. According to Officer Mendoza, his HRD was inside his police vehicle. Officer Estrada advised that his HRD had previously been contaminated and he needed a replacement device (Officer Estrada was provided a replacement device on February 19, 2019). The officers did not have Body Worn Video (BWV), as it was not required by TSD at the time of this incident. This was Officer Estrada and Mendoza's first time working together as partners. According to Officer Estrada, TSD conducted a thorough roll call, which included discussions on Los Angeles Police Department (LAPD) Directive No. 16, de-escalation and command and control. In addition, Officers Estrada and Mendoza discussed contact and cover and went into more depth on de-escalation techniques.

<sup>3</sup> 660 South Figueroa Street is also referred to as 7<sup>th</sup> and Metro.

<sup>4</sup> At approximately 0639 hours, Officer Mendoza had previously updated their Code Six location to 7<sup>th</sup> and Metro on the Figueroa side.

Meanwhile, MTA TSOs Rafael Morales and Renae Ballard, were monitoring the Transit Access Pass (TAP) turnstiles located on the mezzanine level of the train station, approximately 150 feet west of the Blue Line train tracks. They were standing just east of the turnstiles, ensuring the ridership paid the required fare prior to entering.<sup>5</sup> They were attired in black pants, black shirts with the MTA logo on both sleeves, and yellow and black vests with Metro Transit Security embroidered in white lettering on the back. Morales and Ballard were unarmed, but each was equipped with OC spray, collapsible batons, and handcuffs.<sup>6</sup>

At 0645:08 hours, security video from the MTA platform recorded the suspect, later identified as Wilfredo Hernandez, approach the TAP turnstiles and initiate contact with Morales.<sup>7</sup> According to Morales, Hernandez requested to ride the train for free because he had no money, so he was denied entry by Morales.<sup>8</sup> Hernandez produced multiple TAP cards which he scanned individually at the turnstiles.<sup>9</sup> The turnstiles did not open after Hernandez' attempts at using his TAP cards, possibly due to insufficient funds on the TAP cards he presented.<sup>10</sup>

At 0647:08 hours, Hernandez walked away from the turnstiles, in a northwesterly direction, and stood against the wall, just north of the turnstiles, where he remained until 0650:37 hours.<sup>11</sup>

Hernandez then approached the turnstiles a second time, at which time Morales reminded Hernandez that he needed to purchase his fare. According to Ballard,

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<sup>5</sup> According to the MTA website, a one-way ticket cost \$1.75 at the time of this incident.

<sup>6</sup> Los Angeles Police Department (LAPD), Directive No. 8.2, dated August 2018, defines a collapsible baton as an expandable impact and control device consisting of three sections.

<sup>7</sup> Hernandez was a male Hispanic, 5 feet 7 inches tall, 143 pounds, with a date of birth of December 6, 1971. Hernandez was wearing a green zippered sweatshirt over a grey sweatshirt, black pants, and brown/black shoes. He was wearing a backpack and carrying a white plastic bag as well as an umbrella. The video is stored under Technical Investigation Division (TID) No. 659407. The MTA security video does not record audio.

<sup>8</sup> Hernandez and Morales communicated in Spanish. Ballard did not speak Spanish and was unable to comprehend the conversation, therefore, Morales, who is a fluent Spanish speaker, translated the conversation to Ballard.

<sup>9</sup> A TAP card is an electronic ticketing payment method used on most public transport services within Los Angeles County.

<sup>10</sup> The investigation revealed that Hernandez had no money, but was in possession of six TAP cards at the time of the incident. All six TAP cards had a zero balance.

<sup>11</sup> Hernandez removed the green sweatshirt he was wearing and placed it on the floor just north of the turnstiles; along with his backpack, the white plastic bag and umbrella. Hernandez' actions were recorded on MTA security video and is stored under TID No. 659407.

Hernandez appeared to get upset and raised his voice while speaking with Morales. Hernandez then produced a folding knife, which he opened and locked in a fixed position.

At 0651:28 hours, MTA security video captured Hernandez approach the turnstiles while holding the knife in his right hand. Hernandez walked through the Americans with Disability Act (ADA) accessible turnstile without paying the required fare, in violation of Penal Code Section 640 (C) (1) – Fare Evasion. According to Morales, Hernandez stated in Spanish, “Well, you better shoot me because I’m still coming in here.”<sup>12</sup>



**Image of Hernandez holding the knife as he entered the ADA turnstile.**

Morales and Ballard both observed the knife in Hernandez’ right hand. Morales ordered Hernandez to drop the knife multiple times, but Hernandez did not comply with the commands.<sup>13</sup> Morales and Ballard attempted to redeploy by walking backward in a northeasterly direction as Hernandez advanced toward them. According to Morales, Hernandez was holding the knife in his right hand with the blade pointed in an upward direction. Morales broadcast over MTA frequency that they had a man with a knife and needed police assistance.<sup>14</sup>

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<sup>12</sup> Morales, Page 5, Lines 20-21.

<sup>13</sup> According to Morales, his commands to drop the knife were given in English. Morales believes he went from Spanish to English because he was scared and nervous.

<sup>14</sup> The frequency utilized by MTA security personnel is not recorded. At 0651:34 hours, security video captured Morales speaking into the microphone that was clipped to the front of his shirt. The video is stored under TID No. 659436.

***OIG Note No. 1: MTA Security and LAPD do not share a common radio frequency. A request for LAPD assistance must either be made in person or relayed through MTA Security dispatch via hand-held radio.***

Believing Hernandez was going to stab them, Morales and Ballard removed their collapsible batons from their Sam Browne belts and expanded them.<sup>15</sup> According to Ballard, she ordered Hernandez to “get back” and put the knife down multiple times, but he did not comply with her commands.<sup>16</sup> According to Ballard, Hernandez continued walking toward her and replied, “Yeah, yeah” and began jabbing the knife in their direction.<sup>17</sup>

TSO Legaspi heard yelling coming from the area of the turnstiles and looked in that direction. According to Legaspi, he heard one of the TSOs yelling “stop” and observed Ballard with her collapsible baton deployed and Hernandez advancing toward Ballard. Legaspi advised his partner, TSO Estrada, of his observations and told her to advise LAPD officers that they needed assistance; which she did.

According to Officer Estrada, TSO Estrada informed him that TSO personnel needed assistance with a man with a knife and directed him to the turnstiles.

**Note:** According to TSO Estrada, she observed the knife after she requested assistance from Officer Estrada. However, she could not recall what she told Officer Estrada when she initially reported the incident.

Simultaneously, Officer Mendoza heard screaming coming from the direction of the turnstiles. He looked west in that direction and observed multiple TSOs verbalizing with Hernandez. According to Officer Mendoza, Hernandez was in a “fighting stance” and advancing toward the TSOs.<sup>18</sup> Officer Mendoza noted that Ballard’s collapsible baton was deployed; which she held in a raised position above her head.

Officers Estrada and Mendoza began walking in a westerly direction toward the scene.<sup>19</sup> Officer Estrada walked along the south side of the stairwell/escalator; and Officer Mendoza walked along the north side. The officers could see one another as they

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<sup>15</sup> The security video captured Ballard deploy her collapsible baton; however, did not capture Morales deploy his.

<sup>16</sup> Ballard, Page 5, Line 21– Page 6, Line 1.

<sup>17</sup> *Id.*, Page 18, Lines 14-24.

<sup>18</sup> Mendoza, Page 24, Line 24 – Page 25, Line 9.

<sup>19</sup> According to Officer Estrada, the floors of the train station were wet due to the rainy weather. Therefore, he decided to walk in lieu of running, to reduce the risk of falling.

made their approach.<sup>20</sup> According to Officer Mendoza, his intent in taking a different path from his partner was to triangulate on the suspect. When Officer Mendoza approached to within approximately seven to twelve feet of Hernandez, Officer Mendoza yelled, "Hey" in an attempt to divert Hernandez' attention from the TSOs to himself; however, it did not work.

***OIG Note No. 2: According to Officer Mendoza, after he (Mendoza) yelled "hey" at Hernandez, Hernandez directed his attention to Officer Estrada.<sup>21</sup>***

According to Officer Estrada, as he was approaching and neared to within approximately 20 feet of Hernandez, he observed a knife in Hernandez' right hand. According to Officer Estrada, he directed Officer Mendoza to request back-up for a man with a knife.

**Note:** According to Officer Mendoza, he did not hear Officer Estrada direct him to request a back-up, nor inform him that Hernandez was armed with a knife. Officer Mendoza said the train station was very loud at the time of the incident due to noise emitting from the trains, as well as pedestrian traffic. According to Officer Mendoza, the first time he was aware Hernandez was armed with a knife was after the OIS.

According to Officer Mendoza, he did not update their status or request an additional unit or back-up because he wanted to see what was transpiring prior to broadcasting (Investigators' Note No. 1.<sup>22</sup>)

According to Officer Estrada, Hernandez was holding a knife in his right hand and was waving the knife toward the TSOs. Officer Estrada heard multiple TSOs ordering Hernandez to drop the knife. Although the TSOs were backing away from Hernandez, Officer Estrada estimated that Hernandez got within one to two feet of them.<sup>23</sup>

**Note:** According to Officer Mendoza, he heard the TSOs yelling, but could not decipher what they were saying. Officer Estrada was aware that the TSOs were unarmed and believed Hernandez may cause serious bodily injury or death to them. According to Officer Estrada, he could see the fear on the TSO's faces, and recognized it was an immediate defense of life

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<sup>20</sup> The stairwell is an open-air stairwell, surrounded by railings, leading to the lower level. According to measurements taken at scene, the stairwell is approximately 20 feet wide.

<sup>21</sup> Mendoza, Page 27, Lines 1-4.

<sup>22</sup> Mendoza, 2nd Interview, Page 14, Lines 11-25.

<sup>23</sup> According to TSOs Estrada and Legaspi, Hernandez got within approximately four feet of them. TSOs Ballard and Morales estimated that Hernandez got within five to seven feet.

situation. However, due to the fact that the TSOs were in his background, he believed the best option was to deploy his TASER to de-escalate the situation.

Officer Estrada unholstered his TASER, which he held in his right hand. According to Officer Estrada, he aimed the TASER at Hernandez' center mass and fired the TASER in a northwesterly direction from an estimated distance of five to six feet. The TASER was ineffective against Hernandez.

***OIG Note No. 3: The investigation revealed that one TASER dart was embedded in Hernandez's left upper wrist. The other dart was located on the floor, north of the lower-level escalator/stairs.***

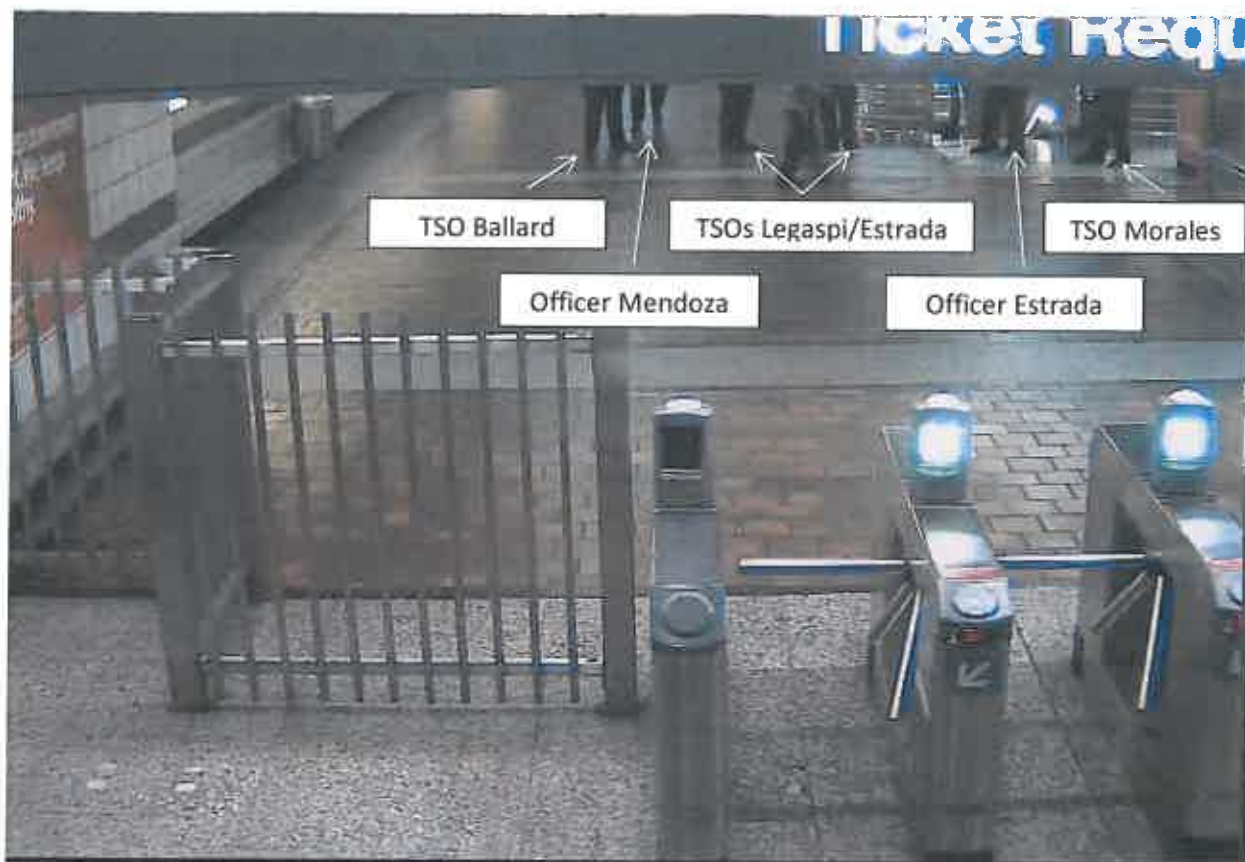
According to witness Marquel Barnes, he had just exited the train and was using the TAP machine near the northeast corner of the platform. He heard TSO Ballard yelling, "I need help" and telling the suspect to back up. He also observed two LAPD officers approach the suspect and give the suspect commands to leave the terminal. Barnes never saw a knife in the suspect's hands, but stated he heard one officer state "stop" several times before the TASER was deployed. Barnes believed the TASER hit the Hernandez in the chest, but stated it appeared to have no effect on the him.<sup>24</sup>

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<sup>24</sup> According to measurements taken at scene, the TAP machine where Barnes was standing was approximately 72 feet from the location where the TASER was deployed.





**Image depicting the position of TSOs and Officers Mendoza and Estrada at the approximate time of the TASER deployment.**

**Note:** Due to the exigent circumstances, Officer Estrada did not have time to verbalize the use of force warning.

A check of the TASER's internal data storage device revealed one activation, approximately five seconds in duration at 0701:43 hours. The investigation determined that the time stamp on Officer Estrada's TASER device was nearly ten minutes ahead of actual time.

According to Officer Mendoza, he did not observe Officer Estrada discharge the TASER, nor did he hear the TASER activation.

[...]

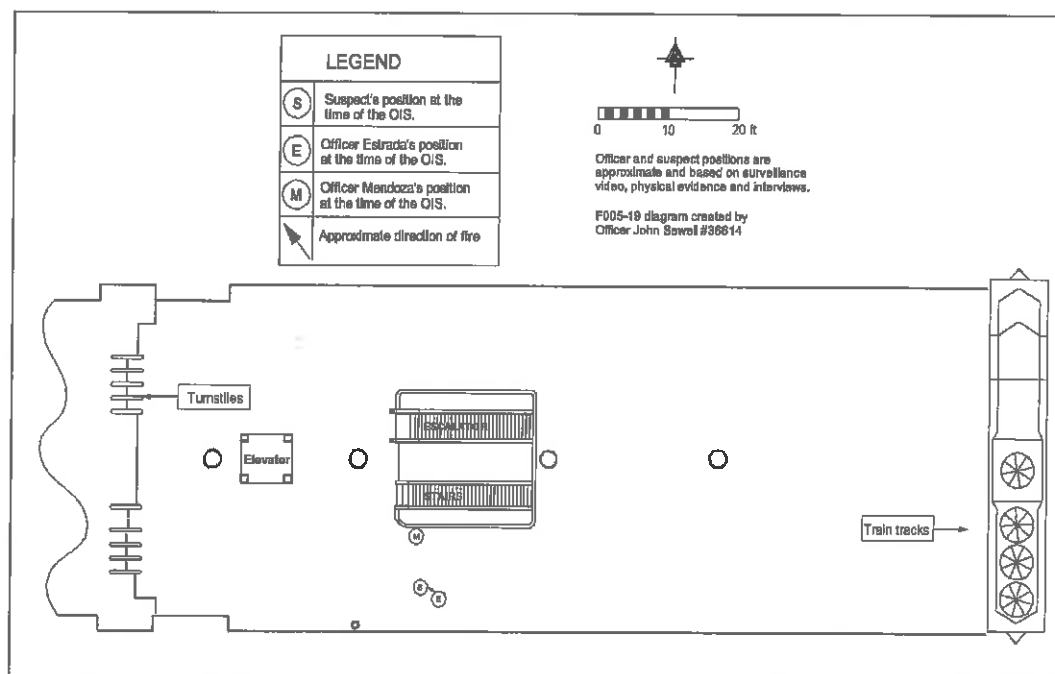
Immediately following the TASER activation, Hernandez directed his attention toward Officer Estrada and began walking rapidly toward him. According to Officer Estrada, Hernandez raised the knife to ear level, with the blade facing toward him (Officer Estrada) and ran in his direction. Officer Estrada redeployed by backing up in a

southeasterly direction, creating space between him and Hernandez; however, Hernandez continued to close the distance on him.

As Hernandez advanced towards Officer Estrada, Officer Mendoza followed behind Hernandez in a southerly direction. TSO Morales also ran in a southwesterly direction to take cover.

Officer Estrada dropped his TASER and unholstered his pistol. As Hernandez closed the distance, Officer Estrada, in defense of his life, fired his pistol at Hernandez from a close contact position.<sup>25</sup> Officer Estrada fired three consecutive rounds at Hernandez in a northwesterly direction from an approximately decreasing distance of four feet to one foot. Hernandez was struck by gunfire and fell to the ground.

**OIG Note No. 4:** Foot traffic at the time of the OIS was light. There is no evidence in the MTA video footage or FID diagrams (see below) that anyone was in Officer Estrada's background at the time he discharged his weapon at the suspect.



**Note:** Witness Barnes also observed the OIS from his same position at the TAP machine. He observed Hernandez walking towards an officer, "like he was getting ready to charge him."<sup>26</sup> Barnes estimated Hernandez

<sup>25</sup> According to the LAPD Firearms Training Manual, dated July 2015, the close contact shooting position is utilized to prevent suspect(s) from gaining control of an officer's gun during close contact situations.

<sup>26</sup> Barnes, Page 16, Lines 12-14.

got to within two to three feet of the officer prior to the OIS, but did not see a knife in Hernandez' hand. According to Barnes, he believed one officer fired the TASER, and the other officer fired his gun. Additionally, Barnes believed the officer used a two-handed shooting grip when firing his gun.

[...]

**Note:** Officer Estrada did not recall giving any commands to Hernandez throughout the incident. However, Morales heard one of the LAPD officers order Hernandez to drop the knife approximately three to four times just prior to the TASER activation.

According to Ballard, she heard Officer Estrada order Hernandez to put the knife down. As Hernandez ran toward Officer Estrada, just prior to the OIS, Ballard heard Officer Estrada order Hernandez to "*get back*" multiple times.

According to Legaspi, he heard an officer order Hernandez to "stop" and "drop the knife" just prior to the TASER activation. Legaspi believed Officer Estrada holstered his TASER prior to unholstering his pistol.

According to Officer Mendoza, just prior to the OIS, he observed Hernandez running toward Officer Estrada with his right hand raised above his shoulder. Officer Mendoza believed Hernandez was going to punch Officer Estrada. Officer Mendoza never observed Hernandez armed with a knife nor did he hear any mention of a knife prior to the OIS. Officer Mendoza observed Hernandez drop the knife as he fell to the ground post OIS.

**OIG Note No. 5:** *Immediately prior to the OIS, the MTA surveillance video captured the movements of Hernandez and Officers Estrada and Mendoza, approximately from the waist down. The video appears to show Hernandez chasing Officer Estrada, with Officer Mendoza running several steps behind Hernandez. All three appear to turn south and then east around the railing of the lower-level escalator/stairs. Officer Estrada's TASER falls to the floor and, shortly after, Hernandez's entire body can be seen falling to the ground. A knife appears several feet northwest of Hernandez.*

*As reported by Officer Mendoza, he saw Hernandez stop after hearing the shots. Officer Mendoza stated, "...and then that's when I saw the knife dropped out of his right hand." He added, "It dropped towards his right." Officer Mendoza continued, "He drops the knife and then paused for a second or two and then he fell to the ground -- he falls to the ground."*<sup>27</sup>

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<sup>27</sup> Mendoza, Page 33, Line 20 – Page 34, Line 14.

*Due to its poor quality and limited coverage area, the video evidence does not show Hernandez holding or dropping the knife during the moments when the OIS occurred.*

At 0652:15 hours, Officer Mendoza broadcast a help call and requested a Rescue Ambulance (RA) for Hernandez. Officer Estrada holstered his pistol when additional units arrived at scene.

Metropolitan Division uniformed Police Officer III Vincent Henson, Serial No. 38046, and Police Officer III+I Erick Hernandez, Serial No. 37868, Unit 31FB303, were working an overtime detail at TSD. They were assisting TSOs on the red and purple line platform at the 7<sup>th</sup> Street and Metro station when they heard shots being fired, followed by the help call.<sup>28</sup> Officers Henson and Hernandez responded to the location on foot and were the first officers to arrive at scene at approximately 0654 hours.

***OIG Note No. 6:*** *According to Officer Henson, approximately 30 seconds elapsed from the time he heard the shots to the time he "made contact with" Hernandez.*<sup>29</sup>

According to Officer Henson, Officer Mendoza directed him to a knife that was lying on the ground, near Hernandez, who appeared to be deceased.<sup>30</sup>

For officer safety, Officer Henson used his right foot to move the knife in a southwesterly direction, away from Hernandez. As captured in security video, the knife came to rest beneath a trash can located approximately 13 feet southwest of Hernandez.<sup>31</sup>

According to Officer Mendoza, Officer Henson moved the knife too far, and Officer Mendoza was concerned that someone may take it.

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<sup>28</sup> According to Officer Henson, he heard approximately three consecutive gunshots. According to Officer Hernandez, he heard two to three pop sounds, which he did not immediately identify as gunshots. According to Officer Hernandez, the train station was very noisy at the time of this incident.

<sup>29</sup> Henson, Page 20, Line 22 – Page 21, Line 3.

<sup>30</sup> According to Officer Henson, the knife was located approximately two feet from Hernandez' left shoulder when he arrived at scene.

<sup>31</sup> The MTA security video captured Officer Henson move the knife at 0654:21 hours. The video is stored under TID No. 659409.

Therefore, Officer Mendoza used his right foot to move the knife back toward Hernandez. According to measurements taken at scene, Mendoza moved the knife approximately two to three feet back towards Hernandez (Investigator's Note No. 2.<sup>32</sup>)

***OIG Note No. 7: Officer Mendoza did not initially report moving the knife. During a follow-up interview conducted by FID on May 2, 2019, he indicated that he did not remember moving the knife. Upon being shown the MTA video, Officer Mendoza did recall moving the knife back toward Hernandez for security purposes. According to Officer Mendoza, "In my head, I was like, okay, I don't know if somebody might be able to grab it. I didn't think of standing there and guarding the -- the knife at that time, which I should have done. And I just moved it back closer to where the suspect was at, but I shouldn't have done that, I guess."***<sup>33</sup>

*Based on the MTA video, there were several LAPD and MTA Security personnel in the immediate area when Officer Mendoza moved the knife. The situation appeared to be static when Officer Mendoza took seven steps toward the knife, hesitated, and then took four more steps toward it. Upon reaching the knife, Officer Mendoza placed his right foot on it and slid it toward Hernandez. Meanwhile, Hernandez was lying motionless. The final location of the knife appeared to be several feet beyond Hernandez's potential reach.*<sup>34,35</sup>

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<sup>32</sup> The MTA security video captured Officer Mendoza move the knife at 0654:52 hours. The video is stored under TID No. 659409.

<sup>33</sup> Mendoza, 2<sup>nd</sup> Interview, Page 10, Lines 1-6.

<sup>34</sup> The following photograph has been inserted by the OIG for clarity.

<sup>35</sup> On December 26, 2019, FID informed the OIG that Officer Henson also placed an FI card marker next to the knife after Officer Mendoza had moved it, believing the knife to still be in the position to which Officer Henson had originally moved it.



**Note:** Officer Henson was unaware that Officer Mendoza moved the knife a second time.

Officer Henson directed TSD personnel to assist with containment and crowd control. Once additional units arrived at scene, Officer [Henson], donned latex gloves and approached Hernandez.<sup>36</sup> According to Officer Henson, he checked Hernandez' pulse by placing his left fingers on the radial artery of Hernandez' left wrist; no pulse was felt. Officers Hernandez and Henson rolled Hernandez from left to right, onto his stomach. Officer Hernandez then placed both of Hernandez' hands behind his back and handcuffed him. Officer Hernandez conducted a search of Hernandez' person and recovered a canister of OC spray from his front right pants pocket.<sup>37</sup>

**OIG Note No. 8:** *Based on MTA video footage, Hernandez remained uncuffed for over 11 minutes.*

**Note:** According to witness Barnes, he believed the same two officers involved in the incident were the ones that handcuffed Hernandez.

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<sup>36</sup> The Los Angeles Police Department, Bloodborne Pathogen Exposure Protocol Field Notebook Divider, dated November 2012 described bloodborne pathogens as germs transmitted by exposure to blood or other potentially infectious body fluids. The document states the following: *Latex gloves shall be worn when contact with blood or other potentially infectious body fluids is anticipated and shall be changed after each contact.*

<sup>37</sup> According to Officer Hernandez, he recalled formulating a tactical plan with Emergency Services Division uniformed K9 Police Officers III Jesus Carrillo, Serial No. 34761 and his partner, Brandi Scimone, Serial No. 38371, to handcuff the suspect. According to video, as well as Officer Henson's statement, only Officers Henson and Hernandez were involved in handcuffing Hernandez. Therefore, Officers Carrillo and Scimone were not interviewed.

At approximately 0656 hours, Northeast Patrol Division, uniformed Detective III Larry Burcher, Serial No. 27971, Unit 31FB30, working an overtime detail at TSD, arrived at scene. Detective Burcher identified and separated the involved officer and requested additional supervisors to assist with the monitoring responsibilities. Sergeant Burcher obtained a Public Safety Statement (PSS) from Officer Estrada and admonished him not to discuss the incident.

At approximately 0707 hours, the Los Angeles Fire Department (LAFD), RA No. 9, staffed by Firefighter/Paramedics (FF/PM) Daniel Fortune, Serial No. 375508, and Jacob Gibson, Serial No. 385124, arrived at scene and rendered aid to Hernandez. He was pronounced dead at scene at approximately 0710 hours (Addendum No. 1).

At approximately 0715 hours, Department Operations Center (DOC) was notified of the OIS and the details of the subsequent notifications are attached (Addendum No. 2). At approximately 1020 hours, Forensic Science Division (FSD), Firearms Analysis Unit (FAU), Supervising Criminalist Nathan Cross, Serial No. N1541, Criminalist II Dyna Shirasaki, Serial No. N4504, and Criminalist II Alan Perez, Serial No. N3438, arrived at scene.

Force Investigation Division (FID), Detective II Paul Bowser, Serial No. 35842, reviewed all documents and circumstances surrounding the separation, monitoring, and admonition to the officers not to discuss the incident prior to being interviewed by FID investigators (Addendum No. 3).

## **Scene Description**

The OIS occurred on the mezzanine level of the MTA train station located at 660 South Figueroa Street. The train station was located beneath the Figueroa Tower, described as a corporate office building, on the northeast corner of 7<sup>th</sup> Street and Figueroa Street. The station had three levels. Riders enter on the street level and make their way downstairs to the various train platforms. The second level down is referred to as the mezzanine level, which had the Expo and Blue line tracks. The Blue line tracks are on the east side of the mezzanine level. The mezzanine level had three entrances and exits: 7<sup>th</sup> Street and Figueroa Street, 7<sup>th</sup> Street and Flower Street, and 7<sup>th</sup> Street and Hope Street. There was also an escalator and staircase in the center of the mezzanine level leading to a lower floor. The third level down is referred to as the Red Line platform, and had the Red and Purple line tracks.

The OIS occurred inside the train station, on the mezzanine level, during the hours of daylight at approximately 0652 hours. The area was well illuminated by artificial lighting affixed to the ceiling of the location. The exterior environmental conditions were rainy and wet.

## **Canvass for Witnesses**

On February 14, 2019, TSD, and Force Investigation Division (FID), personnel conducted a canvass of the area for witnesses to the OIS. Unless otherwise noted, the statements of all witnesses were recorded and transcribed and are contained in this report.

There were two witnesses who only heard shots. The number of gunshots heard ranged from two to four. Copies of all witness statements were retained in the FID casebook.<sup>38</sup>

## **Suspect Description**



Wilfredo Hernandez was a male Hispanic, black hair, brown eyes, 5 feet, 7 inches tall, with a weight of 143 pounds and a date of birth of December 6, 1971. Hernandez was identified by Criminal Information Index (CII) No. A38057218 (Addendum No. 4).

Hernandez had no prior criminal convictions, however; he had two recent arrests in November and December of 2018 for Possession of Narcotics and Trespass. Force Investigation Division, Sergeant II Richard Brunson, Serial No. 32828, contacted the LAPD Mental Evaluation Unit (MEU) and determined that Hernandez had no prior contact with MEU.

Los Angeles Police Department Investigative Reports were completed for Assault with a Deadly Weapon against Officer Estrada, as well as Victims Wilson Mendoza and Antoinette Estrada. The reports named Hernandez as the suspect and were dispositioned with a case status of Cleared Other (Addenda Nos. 5 and 6).

## **Injuries**

At approximately 0656 hours, LAFD RA No. 9 received an alarm to respond to the location. At approximately 0707 hours, they arrived and rendered aid to Hernandez, who was pronounced dead at scene at approximately 0710 hours.

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<sup>38</sup> The interviews of the Heard Only witnesses were documented on Heard Only Witness forms for Civilians. These interviews were not recorded or transcribed. [On December 10, 2019, FID clarified with the OIG that although these witnesses were Heard Only witnesses, complete interviews were conducted and were, in fact, both recorded and transcribed. A copy of the transcripts was provided to the OIG. The witnesses were both MTA Security officers.]



***OIG Note No. 9: The LAFD Firefighter/Paramedics who responded reported that, initially, an unknown inner-perimeter officer requested that only one person enter the crime scene in order to limit contamination.***

***Firefighter/Paramedic Fortune entered first, while the remaining LAFD personnel remained behind red perimeter tape, approximately 15 feet away from Hernandez's body. Based on MTA video, there was no delay with regard to Firefighter/Paramedic Fortune entering the inner crime scene or attending to Hernandez.***

***Firefighter/Paramedic Fortune's initial assessment was that Hernandez showed no signs of life. Firefighter/Paramedic Fortune then summoned Firefighter/Paramedic Gibson to electronically confirm this assessment.***

## **Evidence**

On February 14, 2019, at approximately 1020 hours, Forensic Science Division (FSD) Firearms Analysis Unit (FAU) Supervising Criminalist Nathan Cross, Serial No. N1541, Criminalist II Dyna Shirasaki, Serial No. N4504, and Criminalist II Alan Perez, Serial No. N3438, responded to the scene and conducted an examination of the OIS scene for evidence, including but not limited to ballistic impacts, trajectories, projectiles and forensic evidence.

As a result of their examination, 35 items of evidence were recovered and booked under DR No. 1901-07033. Among the items included were a folding knife, three discharged cartridge cases, two bullet fragments, and two TASER doors. Also booked was a Coroner's kit, including a blood stain card (Addenda Nos. 7 and 8).

On April 1, 2019, FSD Fingerprint Specialist III Edgar Berrios, Serial No. N1917, examined Hernandez' knife. No latent prints of value were developed (Addendum No. 9).

On February 27, 2019, Detective Bowser completed a Request for Serology/Deoxyribonucleic Acid (DNA) Analysis Report, Form No. 12.56.00. Detective Bowser requested that Hernandez' knife be swabbed for potential DNA evidence. It was further requested that the swab(s) collected from the knife be compared to Hernandez' blood stain card.

The laboratory report was completed on June 11, 2019. Criminalist II Samuel Hong, Serial No. N4628, concluded that the partial DNA profile obtained from the knife was consistent with the DNA profile obtained from Wilfredo Hernandez' blood sample (Addendum No. 10).

## **Coroner's Investigation**

### **Coroner's Response:**

On February 14, 2019, at approximately 0838 hours, the Los Angeles County Department of Medical Examiner-Coroner's Office was notified regarding Hernandez' body.

At approximately 1315 hours, Coroner Investigator Ricardo Lopez, Serial No. 615592, arrived at scene and conducted an investigation. Prior to transporting Hernandez' body to the Los Angeles County Forensic Science Center (LACFSC), Lopez collected a hair kit from Hernandez.

At approximately 1420 hours, LACFSC Attendant Araceli Aguilar transported Hernandez' remains to LACFSC. Investigator Lopez collected a Gunshot Residue (GSR) kit and fingernail kit from Hernandez (Addendum No. 11).

**Note:** The Coroner Investigator's Case Report and autopsy report erroneously stated that OC spray was utilized during this incident. The investigation determined that the officers did not deploy OC spray.

### **Autopsy:**

On February 16, 2019, at approximately 1230 hours, Los Angeles County Department of Medical Examiner-Coroner Deputy Medical Examiner Pedro Ortiz, performed a post-mortem examination of Hernandez' remains. Force Investigation Division, Detectives II Alberto Rosa, Serial No. 26598, and Paul Bowser, Serial No. 35842, were present during the examination. Doctor Ortiz concluded Hernandez' death was caused by multiple gunshot wounds. During the examination, Doctor Ortiz obtained specimens from Hernandez for toxicological analysis (Addendum No. 12).

**Gunshot Wound No. 1**, entered through the right side of the neck. The trajectory of the bullet was right to left, front to back, and downward. There was no exit wound. The projectile was recovered from the right side of Hernandez' back. Doctor Ortiz concluded that this gunshot wound was fatal.

**Gunshot Wound No. 2** entered the right side of the abdomen. The trajectory of the bullet was right to left, front to back, and downward. There was no exit wound. The projectile was recovered from the left side of Hernandez' back. Doctor Ortiz concluded that this gunshot wound was also fatal.

Hernandez also sustained a superficial laceration on the right side of his forehead and a small puncture wound to his left hand.

**Note:** During the examination, Doctor Ortiz recovered a TASER dart from the bottom left sleeve area of Hernandez' jacket.

### **Coroner's Test Results:**

#### **Toxicology:**

On April 2, 2019, a Laboratory Analysis Report was reviewed and approved by Doctor Ortiz. The analysis results documented Hernandez' Femoral Blood Alcohol Content (BAC) was .140 (Addendum No. 13).

#### **Gunshot Residue:**

Hernandez was not in possession of a gun at the time of the incident, therefore, the GSR kit was not analyzed.

### **Clothing Analysis**

On July 19, 2019, FSD, FAU, Criminalist I Trisha Ariyasu, Serial No. N4729, conducted an analysis of Hernandez' clothing. Defects were identified on the front right abdomen area of Hernandez' sweatshirt (Defect A) and front right abdomen area of his T-shirt (Defect B). Both defects were consistent with the passage of a bullet.

The area around Defect A was visually and microscopically examined, as well as chemically processed for the presence of gunshot residue. There was no discernible gunshot residue pattern, therefore, a muzzle to target distance could not be determined. Defect B was consistent with being an undergarment (Addendum No. 14).

### **Weapons**



Wilfredo Hernandez was armed with a black textured, folding knife with a 3-inch stainless steel blade, locked in the open/fixed position. The knife was recovered from the floor, approximately 10 feet west of Hernandez' body.<sup>39</sup>

Officer Estrada was armed with a Department approved .40 caliber Glock, Model 22, semiautomatic pistol. The pistol was carried in a black Department approved single retention holster. According to Officer Estrada, at the time of the OIS, his pistol was loaded to capacity with 16 rounds of Smith and Wesson, Winchester Ranger, Department-approved .40 caliber ammunition. Fifteen rounds were in the magazine and one round was in the chamber of the pistol.

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<sup>39</sup> As previously mentioned, the knife was moved away from Hernandez after the OIS by Officer Henson. The knife was then moved back towards Hernandez by Officer Mendoza.

On February 14, 2019, at approximately 1300 hours, FID Detective II Blair Grabiak, Serial No. 26647, conducted a post-incident examination of Officer Estrada's pistol. Detective Grabiak determined the pistol was loaded with one round in the chamber and 12 rounds in the magazine.

He also inspected two additional magazines that were carried in Officer Estrada's magazine pouch. Both magazines were loaded with 15 rounds of Smith and Wesson Winchester Ranger, Department-approved .40 caliber ammunition. The results of the magazine count were consistent with Officer Estrada firing three rounds during the OIS.

On March 7, 2019, FSD, FAU Criminalist II Fadil Biraimah, Serial No. N3140, examined and test-fired Officer Estrada's pistol. The pistol's measured trigger pull was within Department specifications (Addendum No. 15).

Force Investigation Division, Detective III Luis Alarcon, Serial No. 30383, verified that Officer Estrada's .40 caliber Glock pistol was entered into the Firearm Inventory Tracking System (FITS) on June 11, 2008.

## **Firearms**

On February 14, 2019, Criminalists Cross, Shirasaki and Perez performed a bullet path analysis examination of the vicinity of the crime scene pursuant to the OIS. No impacts were observed. Three expended cartridge casings were recovered from the scene, consistent with Officer Estrada firing three rounds.

## **Visual Documentation**

### **Digital In-Car Video System (DICVS):**

Officers Estrada and Mendoza were not assigned a police vehicle at the time of the incident and therefore, were not equipped with DICVS.

Multiple police vehicles equipped with DICVS responded to this incident, resulting in 18 videos, all recorded post OIS. The videos were reviewed in their entirety by FID investigators and were found to be of no evidentiary value, as they did not capture the OIS or the moments preceding it.

### **Body Worn Video (BWV):**

Twenty-seven police officers activated their BWV at some point during this incident, all of which were recorded post OIS. Those videos were reviewed in their entirety by FID investigators. The following is a synopsis of those BWV's that had significant evidentiary value:

The BWV of Central Patrol Division Uniformed Police Officer II Christopher Albizures, Serial No. 42646, BWV, captured Hernandez being handcuffed as well as statements made by Victim Antoinette Estrada.

The BWV of Rampart Patrol Division Uniformed Police Officer II Andrew Gaxiola, Serial No. 42544, captured statements made by Witnesses Paul Davila and Raymond Lee.

The BWV of Rampart Patrol Division Uniformed Police Officer II Jorge Juarez, Serial No. 34870, captured a statement made by Witness Marquez Barnes.

**Social Media:**

Personnel assigned to FID's Cyber Unit monitored social media sites from the date of the incident until the submission of this investigation. No additional evidence, information, or witnesses were identified via social media.

**Other Department Video:**

There are no other Department videos of this incident.

**Outside Video:**

Force Investigation Division investigators identified and obtained seven MTA security videos that capture the suspect's actions prior to and leading up to the OIS.

The videos were filed under the following TID File Nos:

659407 – Security video from MTA, covered a westerly view of the TAP turnstiles. The video captured Hernandez approach the turnstiles, open his folding knife, and confront the security officers.

659436 – Security video from MTA, covered an easterly view of the TAP turnstiles. The video captured Hernandez confront the security officers, as well as a portion of the OIS.

**Note:** The security video was focused on the turnstiles, and therefore, only captured the feet and legs of Officers Estrada and Mendoza before, during, and after the OIS.

**Photographs:**

Technical Investigation Division Photographer III Gary Glade, Serial No. V9606, responded to the scene. Photographs of the OIS scene and associated evidence are stored under Control Nos. 0787717 and 0787718.

[...]

## Investigators' Notes

1. According to TSD Lieutenant I Leonard Perez, Serial No. 27629, officers working overtime details at TSD are required to go Code Six at their assigned post at the beginning of watch and generate an incident number. If an officer is flagged down by a citizen and/or is conducting enforcement activity, he or she is required to go Code Six and generate a separate incident number. If officers encounter an individual who is aggressive and/or combative, they shall request an additional unit or back-up as appropriate.

Force Investigation Group, Commanding Officer, Commander Robert Marino, Serial No. 27226, informed the Director, Office of Operations, Assistant Chief Robert N. Arcos, of the issue. He recommended the issue to be addressed at the Use of Force Review Board (UOFRB) via Commanding Officer recommendations.

2. Force Investigation Group, Commanding Officer, Commander Robert Marino, informed the Director, Office of Operations, Assistant Chief Robert N. Arcos, about Officer Mendoza moving the knife. He recommended the issue to be addressed at the Use of Force Review Board (UOFRB) via Commanding Officer recommendations.

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## **CHIEF OF POLICE REPORT<sup>40</sup>**

### **Chief of Police Findings**

**Tactics** –Tactical Debrief, Officers Estrada and Mendoza.

**Drawing/Exhibiting** – In Policy, No Further Action, Officer Estrada.

**Less-Lethal Use of Force** – In Policy, No Further Action, Officer Estrada.

**Lethal Use of Force** – In Policy, No Further Action, Officer Estrada.

### **Chief of Police Analysis**

#### **Detention**

- The involved officers responded to an MTA TSO request for assistance for a man armed with a knife at the turnstiles of an MTA station. As the officers approached, an officer observed the suspect walking towards several TSOs while armed with a knife. An officer observed the suspect jab the knife in the direction of the TSOs. As the suspect closed to within a few feet of the TSOs, an officer attempted to detain the suspect using a less-lethal force option. The suspect turned towards the officer, raised the knife to ear level, with the blade facing the officer and ran towards him resulting in an OIS. The officers' actions were appropriate and within Department standards.

#### **Tactics**

- Department policy relative to Tactical Debriefs is: *"The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance"* (Los Angeles Police Department Manual, Volume 3, Section 792.05).

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

#### **Tactical De-Escalation**

- *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain*

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<sup>40</sup> The information provided in this section summarizes the analysis and findings set forth in the Chief of Police's report for this case.

*voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

#### *Tactical De-Escalation Techniques*

- *Planning*
  - *Assessment*
  - *Time*
  - *Redeployment and/or Containment*
  - *Other Resources*
  - *Lines of Communication*
- (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)*

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, Officers Estrada and Mendoza responded to a request for assistance from MTA TSOs in dealing with a suspect who was armed with a knife. As the incident rapidly escalated, Officer Estrada deployed a TASER and subsequently was involved in an OIS.

- **Planning** – While Officers Estrada and Mendoza had not previously worked together, they both attended the TSD roll call in which tactical de-escalation and command and control was reviewed and discussed. Prior to working together on the day of the incident, they had each worked numerous TSD overtime shifts and therefore had experience in the specific work duties and environment encountered in MTA stations. Additionally, Officers Estrada and Mendoza discussed the roles of contact and cover, tactics related to the MTA location and de-escalation as they travelled to their assigned post. It was noted that the officers utilized non-verbal communication with each other and triangulated on the suspect by walking on opposite sides of the escalators as they approached his location. While it would have been preferred that they discussed more specific plans prior to engaging the suspect, the rapidly unfolding and escalating nature of the incident, along with the loud noise inside the MTA station, limited their ability to communicate with each other as they approached the suspect's location.
- **Assessment** – Officer Estrada observed that Hernandez was armed with a knife and while Officer Mendoza did not observe the knife, he could see that the suspect was in what he described as a “fighting stance.” Due to the suspect's close proximity to the TSOs, Officers Estrada and Mendoza contacted the suspect. Officer Estrada continuously assessed the suspect's actions, determined that the



suspect posed a threat of serious bodily injury or death to some of the TSOs in the area. Officer Estrada believed the situation had arisen to a lethal force situation but chose to deploy his TASER because the TSOs were in his background. Officer Estrada utilized his TASER and assessed that the TASER did not stop the suspect's actions. The suspect turned toward the officer and began to charge him while holding the knife pointed toward him. Officer Estrada then assessed that the suspect now posed a deadly threat to him, resulting in the OIS. During the OIS, Officer Estrada assessed that the suspect had fallen and stopped firing once the suspect ceased being a deadly threat to him.

- **Time** – The officers were faced with a rapidly escalating incident in which the suspect's actions posed a deadly threat to the TSOs at the scene. Due to the suspect's actions, the officers had limited opportunity to utilize distance and cover to create more time to make decisions and utilize other options. Approximately five seconds elapsed from the deployment of the TASER to the OIS. A review of the area in which the OIS occurred revealed that there were limited options for cover and there was a rush hour crowd in the MTA station. Officer Estrada attempted to gain more time during the incident by moving backward from the suspect, but the suspect rapidly closed the distance after the deployment of the TASER, resulting in the OIS.
- **Redeployment and/or Containment** – Officers Estrada and Mendoza approached the suspect's area and positioned themselves to triangulate on the suspect in order to contain him. In response to the dynamic and rapid movement of the suspect, Officer Estrada continuously redeployed, and even moved backward in an attempt to maintain distance from the suspect who was moving towards him while armed with a knife. The investigation determined that Officer Estrada redeployed approximately 31 feet from the location where the TASER was deployed to the location of the OIS.
- **Other Resources** – The suspect rapidly escalated the incident with his aggressive actions. Officer Estrada attempted to communicate with Officer Mendoza to request additional units, but due to the noisy environment, Officer Mendoza did not hear him. Officer Estrada utilized a TASER as a less lethal force option on the suspect with limited effect. While the Chief would have preferred additional resources respond to the incident, the rapid escalation by the suspect limited the officers' opportunity to request any additional resources. When the opportunity provided itself, Officer Mendoza did request additional resources, including a supervisor, to respond to the location.
- **Lines of Communication** – The rapid nature of the incident limited the officers' ability to establish lines of communication with the suspect and each other. The TSOs who were engaged with the suspect attempted to establish communication

with the suspect prior to the officers' arrival, but he refused to drop the knife and continued to advance toward them. As the officers approached the suspect's location, they utilized non-verbal communication with each other and triangulated on the suspect by walking on opposite sides of the escalators. Once Officers Estrada and Mendoza arrived at the scene, the suspect already posed a deadly threat to the TSOs, which prevented further communication efforts.

The UOFRB determined, and the Chief concurred, that while Officers Estrada and Mendoza implemented elements of de-escalation, the dynamic actions of the suspect, along with the environment of the MTA location, limited the officers' ability to fully implement further de-escalation techniques.

During a review of the incident, the following Debriefing topics noted:

### **Additional Tactical Debrief Topics**

- **Preservation of Evidence** – The investigation revealed Officer Henson used his foot to move the knife approximately 13 feet away from the suspect. Subsequently, Officer Mendoza used his foot to move the knife approximately two to three feet closer towards its original position to prevent the possibility of a patron taking the knife. While Officer Mendoza's actions were understandable, he is reminded that whenever tactically feasible, it is preferable to have someone guard evidence and leave it undisturbed until FID investigators can properly document and preserve the scene. Additionally, Officer Mendoza is reminded that once evidence is moved, it should not be placed back into its former position. The Chief will direct that this be a topic of discussion during the Tactical Debrief.
- **Tactical Communication** – While the investigation revealed that the officers used non-verbal communication and attempted to communicate the need for additional resources, Officer Estrada did not verbally advise Officer Mendoza of TSO Estrada's request for assistance. The UOFRB considered the rapidly unfolding nature of the incident and that the officers had limited time to make a tactical plan while responding. While these were factors which led to a lack of verbal communication, the officers are reminded that when tactically feasible it is preferred to advise responding personnel of all pertinent information during a tactical situation. The Chief will direct this be a topic of discussion during the Tactical Debrief.
- **Maintaining Control of Equipment** – The investigation revealed that Officer Estrada dropped his TASER as he transitioned to his service pistol. Officer Estrada was faced with a dynamic deadly force situation with a suspect who charged at him with a knife despite a TASER being discharged at him. Officer Estrada was forced to immediately transition from his TASER to his service pistol in order to stop the deadly threat. In order to complete the transition, Officer Estrada dropped the

TASER on the ground and drew his service pistol. While it was reasonable in this case due to the time compressed nature of the incident, officers are reminded of the importance of maintaining control of their equipment when feasible and the Chief will direct that this be a topic of discussion during the Tactical Debrief.

- **Reverence for Human Life** – According to the FID investigation, LAFD Paramedics J. Gibson, Serial No. 385124 and D. Fortune, Serial No. 375508, Station No. 9, responded to the request for a Rescue Ambulance. Paramedics Gibson and Fortune arrived at scene and met with an unidentified officer who was controlling the perimeter of the crime scene.<sup>41</sup> According to Paramedic Gibson, the officer initially allowed only one paramedic into the crime scene in order to prevent the disturbance of evidence.

Although officers at the scene believed that the suspect was already deceased, all involved personnel are reminded that they are not medical professionals and that the reverence for human life is more important than the preservation of any evidence. The Chief will direct that this be a topic of discussion during the Tactical Debrief.

## Command and Control

- *Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

*Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (Los Angeles Police Department, Training Bulletin, Volume XLVII Issue 4, July 2018).*

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<sup>41</sup> Force Investigation Division investigators were unable to identify the officer that interacted with the paramedics despite reviewing and cross-checking the crime scene log and available BWV.

Detective Burcher responded to the scene and identified the officers that were involved in the use of lethal force. He immediately separated and monitored the officers and obtained a PSS from Officer Estrada. Detective Burcher appropriately assumed the role of the IC and requested additional supervisors to assist with the monitoring of the involved officers.

**Note:** The UOFRB also noted that prior to supervision arriving and due to the ongoing tactical incident, Officer Hernandez gathered sufficient information from Officers Estrada and Mendoza to ensure public safety and the securing of the crime scene.

Sergeant Murra responded, assumed monitoring responsibilities of Officer Mendoza and obtained a PSS.

Lieutenant Hainline responded and assumed the role of the IC and ensured that the crime scene was preserved.

Detective Burcher's actions during this incident demonstrated active leadership. The UOFRB noted that he displayed a calm and patient demeanor throughout the incident. Detective Burcher utilized assessment, planning, additional resources and communication to effectively manage an ongoing and dynamic tactical incident. Detective Burcher contained the scene and ensured a smooth transition when Lieutenant Hainline arrived and assumed control of the incident.

Lieutenant Hainline's actions during this incident demonstrated active leadership. The UOFRB also noted that Lieutenant Hainline displayed a calm and patient demeanor throughout the incident and utilized assessment, planning, additional resources and communication to effectively manage the crime scene until the arrival of FID investigators.

Lieutenant Hainline, Detective Burcher, and Sergeant Murra's actions were consistent with Department supervisory training and met the Chief's expectations of field supervisors during a critical incident.

## **Tactical Debrief**

- In conducting an objective assessment of this case, the UOFRB determined, and the Chief concurred, that Officers Estrada and Mendoza's tactics did not substantially deviate from approved Department tactical training.

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Therefore, the Chief will direct that Officers Estrada and Mendoza attend a Tactical Debrief and that the specific identified topics are discussed.

**Note:** Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Radio and Tactical Communication (including Code Six);
- Tactical Planning;
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

### **General Training Update (GTU)**

- On February 28, 2019, Officers Estrada and Officer Mendoza attended a GTU. All mandatory topics were covered, including Encounters with Mentally Ill, Armed Suspects, Reverence for Human Life, Tactical Planning, Tactical Communication and Edged Weapons.

### **Drawing/Exhibiting**

- Department policy relative to drawing and exhibiting a firearm is: *"An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified"* (Los Angeles Police Department Manual, Volume No. 1, Section 556.80).

According to Officer Estrada, Hernandez was still armed with a knife and had closed to within one to two feet of him. Officer Estrada believed Hernandez was going to hurt him, causing him to fear for his life. Officer Estrada saw the knife coming towards him and attempted to redeploy backwards to find cover and create distance. Due to Hernandez's close proximity, Officer Estrada dropped his TASER, he drew his service pistol to a close contact position and placed his finger on the trigger.

*"And that's when he -- basically that's when he flipped the knife, and he came -- he closed the distance. He looked at me, he just started closing the distance, which I redeployed. I tried to redeploy and move back. And at which point he closed the distance to -- to close -- the Taser was ineffective, and I had to transition to my gun. And, you know, I was in fear for my life... because he closed the distance so close. He was one to two feet, real close."*<sup>42</sup>

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<sup>42</sup> Estrada, Page 31, Lines 11-19 and Lines 21-23.

*"He was going to hurt me. He was going to -- I was in fear for my life. I saw the knife coming towards me."*<sup>43</sup>

*"He looked at me, he just started closing the distance, which I redeployed. I tried to redeploy and move back. And at which point he closed the distance."*<sup>44</sup>

*"I was only able to unholster it and do like a close contact shoot from my -- basically my hip."*<sup>45</sup>

In this case, the UOFRB conducted a thorough review and evaluation of the reasonableness of Officer Estrada's Drawing/Exhibiting. The UOFRB noted that Officer Estrada had observed the suspect was armed with a knife. Officer Estrada had attempted to use a TASER on the suspect, but it did not subdue the suspect. The suspect, still armed with the knife which was raised and pointing in Officer Estrada's direction, rapidly closed the distance to Officer Estrada. According to Officer Estrada, the suspect came within one to two feet from him, prompting Officer Estrada to fear for his life and draw his service pistol.

As such, based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officer Estrada, while faced with similar circumstances, would reasonably believe that there was a substantial risk the situation may escalate to the point where deadly force may be justified.

Therefore, the Chief found Officer Estrada's Drawing/Exhibiting to be In Policy, No Further Action.

### **Use of Force – General**

- *It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:*
  - *Defend themselves;*
  - *Defend others;*
  - *Effect an arrest or detention;*
  - *Prevent escape; or,*
  - *Overcome resistance (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

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<sup>43</sup> *Id.*, Page 35, Lines 23-25.

<sup>44</sup> *Id.*, Page 31, Lines 14-16.

<sup>45</sup> *Id.*, Page 37, Lines 16-17.

*The Department examines reasonableness using Graham v. Connor and from the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:*

- *The seriousness of the crime or suspected offense;*
- *The level of threat or resistance presented by the subject;*
- *Whether the subject was posing an immediate threat to officers or a danger to the community;*
- *The potential for injury to citizens, officers or subjects;*
- *The risk or apparent attempt by the subject to escape;*
- *The conduct of the subject being confronted (as reasonably perceived by the officer at the time);*
- *The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;*
- *The availability of other resources;*
- *The training and experience of the officer;*
- *The proximity or access of weapons to the subject;*
- *Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,*
- *The environmental factors and/or other exigent circumstances (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

### **Less-Lethal Use of Force**

- *Whenever practicable, officers shall exercise de-escalation techniques to resolve potential use of force incidents and seek voluntary compliance from suspects/subjects.*

*The courts have held that Less-Lethal force options are “capable of inflicting significant pain and may cause serious injury.” Therefore, consistent with the Department’s Use of Force Policy, Less-Lethal force options are only permissible when:*

- *An officer reasonably believes the suspect or subject is violently resisting arrest or poses an immediate threat of violence or physical harm.*

*Less-Lethal force options shall not be used for a suspect or subject who is passively resisting or merely failing to comply with commands. Verbal threats of violence or mere non-compliance by a suspect do not alone justify the use of Less-Lethal force.*

*An officer may use the TASER as a reasonable force option to control a suspect when the suspect poses an immediate threat to the safety of the officer or others.*

*The optimal range for the X-26 TASER is 7-15 feet. This range gives the most effective spread of the probes to accomplish neuro-muscular incapacitation (Los Angeles Police Department Use of Force Tactics Directive No. 4.5, Electronic Control Device TASER – July 2018).*

**Officer Estrada** – TASER, one five second activation in probe mode, from an estimated distance of five to six feet.

According to Officer Estrada, the TSOs appeared scared and were screaming at Hernandez to drop the knife. Officer Estrada observed that Hernandez was within one to two feet of the TSOs and was holding the knife at chest level with it pointing towards the TSOs. Although Officer Estrada believed the incident had escalated to an immediate defense of life situation, he attempted to de-escalate the situation by drawing his TASER because he believed it would be unsafe to utilize his service pistol due to the TSOs being in his background. Officer Estrada aimed at Hernandez's center mass and activated it in probe mode for one five-second cycle.

Officer Estrada recalled, *"As I continued walking in a westbound direction, I see that this suspect is holding a knife towards the four security officers. He's kind of waving it. His demeanor is like I'm going to hurt you, pointing it at them.*

*...to protect the MTA staff there, you know, from any injury, great bodily injury, or even death -- I deployed my Taser at the time trying to deescalate the situation. I deployed it."*<sup>46</sup>

*"He [Hernandez] was holding the knife, and there was approximately four – three to four officers, MTA, that he was approaching with the knife. And I could see that they're also backing up, because they're scared, you know, for their life. They're screaming..."*<sup>47</sup>

*"It [the knife in Hernandez' possession] was at chest level."*<sup>48</sup>

*"...I took it as IDOL, immediate defense of life, at the time, because he was closing the distance between not just the employees and at which point -- you know, I*

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<sup>46</sup> *Id.*, Page 13, Lines 18-22 and Page 14, Lines 1-4.

<sup>47</sup> *Id.*, Page 21, Lines 22-15 and Page 22, Lines 1-2.

<sup>48</sup> *Id.*, Page 24, Line 4.



*believe that he could cause serious bodily -- even death to them. You know, could cause real harm to them.*"<sup>49</sup>

*"I know it hit center. I deployed -- I pointed the laser right at center mass and that's where I deployed."*<sup>50</sup>

Officer Estrada was asked questions regarding the deployment of his TASER by his attorney.

ATTORNEY HANNA: *"So what you're saying is that he was in between you and the other MTA people. And if you had shot, you would have killed them, so --"*

OFFICER ESTRADA: *"Yeah. Yes, at the time my background wasn't -- because they were there, it wasn't -- so my best situation was to deploy my Taser. Because, like I said, at that time my background wasn't... a clean background... the background wasn't good because the officers were there... There was four of them there at the time."*<sup>51</sup>

The UOFRB reviewed and conducted an evaluation of Officer Estrada's TASER deployment and noted that Officer Estrada observed that Hernandez was armed with a knife and was within several feet of the TSOs. Officer Estrada heard multiple TSOs ordering Hernandez to drop the knife and deployed his TASER to de-escalate the situation and protect the TSOs from being cut with the knife. The UOFRB also evaluated the lack of a verbal warning prior to the deployment of the TASER and noted that prior to the officers' arrival, TSOs had repeatedly commanded Hernandez to drop the knife and he refused to comply. By the time the officers had arrived on the scene, the situation had already escalated to the point where Hernandez' actions posed a threat of serious bodily injury or death to several TSOs and a verbal warning was not feasible.

The UOFRB determined, and the Chief concurred, that the lack of verbal warning was not a deviation.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred that an officer with similar training and experience as Officer Estrada, while faced with similar circumstances, would believe that the same application of less-lethal force would be objectively reasonable.

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<sup>49</sup> *Id.*, Page 29, Line 25 – Page 30, Line 6.

<sup>50</sup> *Id.*, Page 30, Lines 20-22.

<sup>51</sup> *Id.*, Page 52, Line 20 – Page 53, Line 6.

Therefore, the Chief found Officers Estrada's Use of Less-Lethal Force and In Policy, No Further Action.

### **Lethal Use of Force**

- *Law enforcement officers are authorized to use deadly force to:*
  - *Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or,*
  - *Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or,*
  - *Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury*

*The reasonableness of an Officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force (Los Angeles Police Department Manual, Volume No.1, Section 556.10).*

**Officer Estrada** – 9mm, three rounds in a northwesterly direction from a decreasing distance of four feet to one foot.

According to Officer Estrada, Hernandez had closed the distance and was close to him. While holding his service pistol at his hip, Officer Estrada fired approximately two to three rounds at Hernandez to stop the threat.

Officer Estrada recalled, *"I transitioned to my gun and deployed my gun and shot approximately two to three rounds. It was -- he closed the distance so close -- so close to me that it was almost a close contact -- close contact."*<sup>52</sup>

In this case, the UOFRB conducted a thorough review and analysis of the reasonableness of Officer Estrada's use of lethal force and considered the details of the encounter of the TSOs and Hernandez prior to the arrival of the officers. The UOFRB noted that Hernandez had armed himself with a knife and was approaching TSOs as Officers Estrada and Mendoza arrived at the location in response to a request for assistance. Officer Estrada believed that the situation had escalated to the point where Hernandez posed a threat of serious bodily injury or death to several TSOs. Officer Estrada assessed the situation as a lethal force situation but decided to draw his TASER because he knew that the TSOs would be in his background if he utilized his service pistol. Officer Estrada discharged his TASER but found that it

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<sup>52</sup> *Id.*, Page 15, Lines 5-9.

was not effective. Hernandez then turned his attention toward Officer Estrada and charged at him while holding a knife pointed in Officer Estrada's direction. In response to Hernandez' attack, Officer Estrada redeployed backward and fired his service pistol from a close contact position at a decreasing distance of four feet to one foot. Officer Estrada ceased firing after he assessed that Hernandez no longer posed a deadly threat. The UOFRB noted that although Officer Estrada used lethal force to defend his life, he also demonstrated a reverence for life by assessing the situation and first utilizing the TASER, redeploying approximately 31 feet before the OIS and then ceasing fire as soon as Hernandez ceased to pose a deadly threat.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officer Estrada, would reasonably believe Hernandez's actions presented an imminent threat of death or serious bodily injury and that the Use of Lethal Force would be objectively reasonable.

Therefore, the Chief found Officer Estrada's Use of Lethal Force to be In Policy, No Further Action.

### **Additional/Equipment**

- **Required Equipment** – The investigation revealed that Officer Mendoza was not in possession of a Hobble Restraint Device (HRD) at the time of the incident. This issue was brought to the attention of Captain C. Waters, Serial No. 26246, Commanding Officer, Northeast Patrol Division. Captain Waters addressed this issue through divisional training, which was entered into the Learning Management System (LMS). The Commanding Officer of Operations-Central Bureau and the Director of the Office of Operations (OO) concurred with this action. As such, the Chief deemed no further action is necessary.

The investigation also revealed that Officer Estrada was not in possession of an HRD at the time of the incident. This issue was brought to the attention of Captain B. Morrison, Serial No. 30789, Commanding Officer, Pacific Patrol Division. Captain Morrison addressed this issue through divisional training, which was entered into the LMS. The Commanding Officer of Operations-West Bureau and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

### **Audio/Video Recordings**

- **Outside Video** – A MTA surveillance camera, located on Level 2, captured the OIS.

- **Digital In-Car Video System (DICVS)** – Officers Estrada and Mendoza were assigned to foot beats and were not assigned a police vehicle at the time of this incident. Central Patrol Division vehicles were equipped with DICVS at the time of the incident. None of the DICVS captured the incident.
- **Body Worn Video (BWV)** – Officers Estrada and Mendoza were not equipped with BWV at the time of this incident. Per Office of Operations Notice 1.11, dated September 8, 2017, personnel assigned to TSD overtime details are not required to wear BWV. Central Patrol Division officers who responded to the location were equipped with BWV. None of the BWV captured the incident.

### **Additional**

- In order to enhance future tactical performance, the Department has obtained a grant funding, supported by the Los Angeles County Metropolitan Transportation Authority (LACMTA) to acquire 355 BWV cameras, as well as the associated docks and cell phones to be used by full time and overtime personnel assigned to TSD. The installation of hardware and the purchase of the required equipment is in process and it is anticipated that BWV will be implemented by May of 2020. Transit Services Group is currently coordinating a working group to discuss the changes in Department policy that will be required to mandate the wearing of BWV for TSD overtime personnel.

### **Chief's Direction**

- Additionally, the Chief directed the Director of the Office of Special Operations to conduct an evaluation of alternative communication methods, such as the use of standardized hand signals, to be used by officers in the loud environments that are inherent in MTA Stations.

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## **INSPECTOR GENERAL REVIEW**

### **Inspector General Analysis**

#### **Investigation Quality**

- No significant issues of concern were identified in relation to investigation quality.

#### **Training Issues**

- No significant issues of concern were identified in relation to training.

#### **Equipment Issues**

- The Department does not currently require officers to wear BWV devices during assignments to TSD overtime details. As indicated in the Chief's report, the Department anticipates that the use of BWV equipment by officers engaged in such details will be implemented by May of 2020.

#### **Detention**

- The OIG concurs with the Chief's analysis.

#### **Tactical De-Escalation**

- The OIG concurs with the Chief's analysis.

### **Inspector General Recommendations**

#### **Tactics**

- The OIG concurs with the Chief's findings.

#### **Drawing and Exhibiting**

- The OIG concurs with the Chief's findings.

#### **Less-Lethal Use of Force**

- The OIG concurs with the Chief's findings.

### **Lethal Use of Force**

- The OIG concurs with the Chief's findings.

A handwritten signature in black ink, appearing to read 'M.P.S.', with a long horizontal line extending to the right.

MARK P. SMITH  
Inspector General